

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 16 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0146
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
MARION AUQUORA PENN JR.,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201000630

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Joel A. Larson, Cochise County Legal Defender  
By Joel A. Larson

Bisbee  
Attorney for Appellant

B R A M M E R, Judge.

¶1 Following a jury trial, appellant Marion Penn Jr. was convicted of theft and unlawful use of a means of transportation. The trial court suspended the imposition of sentence and placed Penn on concurrent terms of intensive probation, the longer of which was five years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating he has

reviewed the record and has found no “arguable issues to assert on direct appeal.” Counsel has asked us to search the record for fundamental error. Penn has not filed a supplemental brief.

¶2 Viewed in the light most favorable to sustaining the verdict, the evidence was sufficient to support the jury’s finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at trial showed Penn’s girlfriend’s sister had allowed him to borrow her vehicle for an hour to go to cash a check, but he kept the car until the following day and did not return it, leaving it on a dirt road. We further conclude the term of probation was appropriate. *See* A.R.S. §§ 13-901, 13-902, 13-1803, 13-1814.

¶3 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Therefore, Penn’s convictions and terms of probation are affirmed.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge